IN THE SUPERIOR COURT OF DELAWARE

GLOBAL TRADINGS, LLC Plaintiff, v. LOFTON ENTERPRISE GROUP, LLC, & UNKNOWN OCCUPANTS, Defendants.	)))))))))	Civ. Act. No. N25C-10-238 DJB

Date Submitted: August 20, 2026
Date Decided: November 24, 2026

Memorandum Opinion

On Plaintiff's Complaint for Writ of Possession – **GRANTED**

David E. Matlusky, *Esquire*, The Matlusky Firm, Wilmington, Delaware, for Plaintiff

Emery Abdel-Latif, Esquire, Kralizec Law, LLC, Wilmington, Delaware, for Defendant

BRENNAN, J.

This matter stems from an ejectment action that Plaintiff Global Tradings, LLC (hereinafter "Global") filed against Defendant Lofton Enterprise Group & Unknown Occupants (hereinafter "Lofton" or collectively, "Defendants") seeking to remove Defendants from the property located at 2 S. Congress St., Port Penn, DE 19731 (hereinafter the "Property").[1]

In December of 2022, Lofton executed an unrecorded commercial lease with Port Penn Fire Company (hereinafter "Port Penn"), the original owners of the Property.[2] The Property was subsequently sold to IBR Properties, LLC (hereinafter "IBR").[3] IBR allowed the Property to proceed to foreclosure, and it was eventually sold via Sheriff's sale at which time it was purchased by Global Tradings.[4] Following its purchase, Global Tradings did not execute a new lease with Lofton.[5]

In response to this ejectment action, Lofton asserts the affirmative defense that their original lease remains in effect, which precludes ejectment from the Property.[6] Pending before the Court is Global Tradings' Motion for Writ of Possession.[7] As a result, the Court is asked to review the statutory framework surrounding Sheriff sales

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[1] *Global Tradings, LLC v. Lofton Enterprise Group, LLC & Unknown Occupants*, N25C-10-238 DJB, Docket Item (hereinafter "D.I.") 1.
[2] D.I. 17, p. 4.
[3] *Id.*
[4] *Id*.
[5] *Id*.
[6] *Id*. at 4-5.
[7] *Id*.

and ejectment actions and consider whether an unrecorded lease survives such a sale. Delaware is a race-recording jurisdiction and as a result, even though the lease in question at the case at bar pre-dated the foreclosed upon mortgage, it was unrecorded and thus extinguished when the property was sold at Sheriff's sale. As a result, the filed Motion for Writ of Possession must be **GRANTED.**

I. FACTS

Lofton executed a commercial lease (hereinafter the "Lease") for the Property on December 13, 2022, to expire May 31, 2027, with Port Penn; the Lease was never recorded in the office of the Recorder of Deeds.[8] At the time the Lease was executed, Port Penn owned the Property, but later sold it to IBR who maintained the Lease.[9] IBR executed a mortgage with Wilmington Savings Fund Society (hereinafter "WSFS") on March 27, 2023, yet that mortgage eventually fell in default.[10] On December 27, 2024, WSFS filed a foreclosure action against IBR, and a default judgment was eventually entered against an unresponsive IBR on February 7, 2025.[11]

Global Tradings purchased the Property on July 9, 2025, at Sheriff's sale. Following confirmation, Global Tradings declined to execute a new Lease with

[8] D.I. 17, p. 4, D.I. 11, Ex. B.
[9] *Id*.
[10] *Id*.
[11] *Id*.

Lofton.[12] Global Tradings sought to compel Lofton to vacate the Property and eventually filed this ejectment action against Lofton on October 23, 2025.[13] In its Answer, Lofton asserted the Lease executed with Port Penn, and then IBR, remained in effect following the Sheriff's sale.[14]

II. PROCEDURAL HISTORY

Global filed its Complaint on October 23, 2025.[15] Lofton filed its Answer on January 29, 2026.[16] Oral argument was heard on February 5, 2026, at which time this Court requested supplemental briefing as to the validity of Lofton's Lease following the foreclosure sale.[17] Global Tradings filed its Opening Brief on March 6, 2026.[18] Lofton filed its Answering Brief on March 30, 2026.[19] Global Tradings filed its Reply Brief on April 22, 2026.[20] Oral argument was heard on August 20, 2026.[21] This matter is now ripe for decision.

III. STANDARD OF REVIEW

[12] *Id*.
[13] *Id*.
[14] *Id*. at 4-5.
[15] D.I. 1.
[16] D.I. 11.
[17] D.I. 12.
[18] D.I. 17.
[19] D.I. 18.
[20] D.I. 20.
[21] D.I. 22.

An ejectment action requires the landowner who is out of possession to prove by a preponderance of evidence that they are "(1) out of possession of the property; and (2) have a present right to possess the property."[22] If the landowner successfully proves they are entitled to possession of the land in question they may "be granted possession of the disputed property" and a judgment in their favor may be entered.[23] Such judgment "establishes the legal right of the plaintiff to the possession of the premises; it is not conclusive as to title."[24]

IV. ANALYSIS

Global Tradings contends it is entitled to possession of the Property on two grounds. First, Global Tradings argues Lofton's Lease is subordinate to the Recorded Mortgage as the Lease was never recorded.[25] Second, Global Tradings maintains that Lofton's unrecorded lease was extinguished following the foreclosure sale of the Property.[26] In support, Global Tradings relies on the Delaware Court of

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[22] *Taylor v. Vanhorn*, 2023 WL 3946342, at *2 (Del. Super. June 9, 2023) (citing *Justice v. McGinn,* 1998 WL 229436, n. 9 (Del. Ch. Apr. 21, 1998) ("Here, the Petitioners allege in their complaint that they are in possession of at least a portion of the property in dispute. Should that be established, then an action for ejectment would not be available at law.")).
[23] *Taylor*, 2023 WL 3946342, at *2 (citing *Nelson v. Russo,* 844 A.2d 301, 302 (Del. 2004).
[24] *Id*. (citing 2 Victor B. Wooley, Practice in Civil Actions and Proceedings in the Law Courts of the State of Delaware, § 1614 (1906) citing *Bright's Lessee v. Stevens,* 1856 WL 1008 (Del. Super. Apr. 1, 1856).
[25] D.I. 17, p. 6.
[26] *Id*.

Chancery's decision in *NVR, Inc. v. Spring Oaks Dev. Purchaser, LLC*, which held that any unrecorded property interest is extinguished upon a Sheriff's sale.[27]

In response, Lofton first claims this Court does not have jurisdiction to adjudicate this matter, and argues jurisdiction rests wholly with the Justice of the Peace Court given this litigation surrounds a lease.[28] Lofton further argues the Lease is not extinguished under 10 *Del. C.* § 5066 because a lease is a contract and not an encumbrance, therefore a lease is akin to a restrictive covenant and easement which survives a Sheriff's sale.[29] Finally, Lofton submits a Sheriff's sale does not automatically extinguish a lease and relies on the holdings in *Schwartzman v. Gould* and *Gause v. Richardson*.[30]

A. Jurisdiction is Proper; A Lease is an Encumbrance on Land

It is well settled that "[a] n ejectment is an action at law within the jurisdiction of the Superior Court."[31] Global Tradings' Complaint is one for ejectment, which is an action at law. Accordingly, this Court has jurisdiction to adjudicate this matter. Further, Delaware Courts have recognized that a lease is considered a burden on a property's title that must be cleared to convey unencumbered marketable title

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[27] *Id*. (citing 2025 WL 3515356 (Del. Ch. Dec. 8, 2025).
[28] D.I. 18, p. 3.
[29] *Id*.
[30] *Id*. at pp. 6-8 (citing 160 A. 207 (Del. Super. May 3, 1932); 9 Del. 222, 1870 WL 1132 (Del. Super. Oct. 1, 1870)).
[31] *Taylor*, 2023 WL 3946342, at *2 (citing *Nelson*, 844 A.2d at 302); See also

following Sheriff's sale of a property.[32] A property "interest" includes "leasehold interests and rights."[33] Therefore, a lease constitutes an interest in real property that may operate as an encumbrance on the Property.[34] However, the characterization of the Lease as an encumbrance on the Property does not resolve the issue of whether the Lease survived the Sheriff's sale. Such determination turns on the priority of the Lease with respect to the mortgage, as well as the legal effect of the sale upon the subordinate interest in the Property.

B. The Lease is Subordinate to the Mortgage and was Extinguished Upon Foreclosure of the Property

Delaware is a race-recording jurisdiction and follows the "first in time, first in right" rule codified under 25 *Del. C*. § 153.[35] Lofton's Lease was never recorded, therefore the WSFS mortgage in question takes priority. Because "real property sold at a sheriff's sale is taken free of all nonmortgage liens on the land,"[36] the Lease in question cannot survive under Delaware's statutory scheme. Public policy demands

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[32] *Lewes Inv. Co., LLC v. Estate of Graves*, 2013 WL 508486, at *3 (Del. Ch. Feb. 12, 2013) (Classified leases as the type of interest that would render title unmarketable by stating "[t]he sellers were obligated to deliver 'good and marketable title at closing,' free and clear of all liens, restrictions, easements, encumbrances, leases, tenancies, and other title objections…")(internal citations omitted); *see also Pilot Point Owners Ass'n v. Bonk*, 2010 WL 3959570, at *3 (Del. Ch. Oct. 7, 2010) (internal citations omitted).

[33] 2006 WL 4804019, at *7 (Del. Ch. May 30, 2006)).

[34] *See Hendry v. Hendry,* 2006 WL 4804019, at *7 (Del. Ch. May 30, 2006).

[35] *Eastern Savings Bank, FSB v. CACH, LLC*, 2014 WL 3827496, at *4 (Del. Super. July 31, 2014); 25 *Del. C*. § 153.

[36] *Eastern Savings Bank*, 2014 WL 3827496, at *4.

that when property is sold at Sheriff's sale, the sale "disencumber[s] lands as much as possible from liens" and "require[s] the sheriff to discharge all nonmortgage liens…."[37]

Title 10, Section 4985 of the Delaware Code, requires that "[r]eal estate sold by virtue of execution process shall be discharged from all liens thereon against the defendant ... except such liens as have been created by mortgage or mortgages prior to any general liens."[38] Title 10, Section 5066 of the Delaware Code, provides that property sold following a foreclosure sale is discharged from all encumbrances attributable to the former owner.[39] Specifically, Section 5066 states:

> The person to whom any lands and tenements shall be sold, or delivered, under § 5065 of this title, and such person's heirs and assigns, shall hold the same, with their appurtenances, for such estate, or estates, as they were sold, or delivered for, discharged from all equity or redemption, and all other incumbrances made and suffered by the mortgagor, the mortgagor's heirs, or assigns; and such sale shall be available in law.[40]

The statutory provisions read together support the conclusion that the subordinate Lease was extinguished upon the sale of the Property. Delaware Courts have consistently applied this principle to extinguish unrecorded equitable interests in

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[37] *Eastern Savings Bank, FSB v. CACH, LLC*, 55 A.3d 344, 347 (Del. 2012).
[38] *Eastern Savings Bank,* 55 A.3d at 347. (citing 10 *Del. C.* § 4985).
[39] *Id.*, 55 A.3d at 347 (citing 10 *Del. C.* § 5066).
[40] *Id*.

property upon the completion of a Sheriff's sale; nothing has been presented to support a different conclusion here.[41]

Global Tradings' reliance on *NVR, Inc. v. Spring Oaks Dev. Purchaser, LLC*, is correct.[42] In *NVR*, a corporation entered a Lot Purchase Agreement (hereinafter "LPA") to purchase 158 of 246 lots from the original owner and subsequently secured its purchase rights by paying a deposit that was recorded as a mortgage against the property.[43] Pursuant to the LPA, the sale took place in stages and was contingent upon the completion of certain site improvements and the acquisition of land permits.[44] Prior to the conveyance of the remaining lots under the agreement, the original owner took out a second mortgage, which it defaulted upon, thereby triggering foreclosure proceedings.[45] Ultimately, NVR claimed that any foreclosure sale would be subject to its purchase rights under the LPA.[46] NVR argued that it had superior title over the remaining lots by virtue of the LPA because subordinate nonmortgage liens are the only interests that are extinguished upon foreclosure.[47]

Having applied 10 *Del. C.* § 5066, the *NVR* Court determined a Sheriff's sale not only extinguishes subordinate mortgages but may also eliminate other pre-

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[41] *NVR*, 2025 WL 3515356, at *5-*6.
[42] *Id*. (citing 2025 WL 3515356 (Del. Ch. Dec. 8, 2025).
[43] *NVR*, 2025 WL 3515356, at *1.
[44] *Id.*, at *2.
[45] *Id*.
[46] *Id.*, at *4.
[47] *Id.*, at *5.

existing property interests.[48] The Court explained that although "not all equitable interests survive a sheriff's sale," such a sale can eliminate other pre-existing property interests such as the unrecorded agreement contemplated by the Court.[49]

Although *NVR* did not concern a lease, its reasoning supports the conclusion that an unrecorded interest in real property that is subordinate to a foreclosed mortgage does not survive the Sheriff's sale.[50] Consequently, a subordinate interest cannot be enforced against a Sheriff's sale purchaser merely because it was enforceable against the prior owner. Given that an unrecorded lease lacks priority over a recorded mortgage, the subordinate Lease at issue here was extinguished upon the completion of the Sheriff's sale.[51] Accordingly, Global Tradings purchased the Property free of any interest arising under the Lease.

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[48] *Id.*, at *5-*6.
[49] *Id*.
[50] *Id.*
[51] Lofton's reliance on *Schwartzman* and *Gause* does not alter this conclusion. Neither case addressed whether a lease subordinate to a previously recorded mortgage survives foreclosure of that mortgage. *Schwartzman*, 160 A. 207; Gause, 9 Del. 222. Both cases concerned an execution against a tenant's property and address circumstances in which a landlord purchased the tenant's leasehold interests. That is not the issue here.

V. CONCLUSION

For the foregoing reasons Global Tradings' Writ of Possession is **GRANTED**.

IT IS SO ORDERED.



Danielle J. Brennan, Judge